STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2003-348

September 24, 2004

PUBLIC UTILITIES COMMISSION
Investigation Into the Conservation Fund Assessments of the COUs

ORDER

WELCH, Chairman; DIAMOND and REISHUS, Commissioners

I. SUMMARY

We opened this investigation to consider whether consumer-owned transmission and distribution utilities (COUs) should pay conservation assessments at less than the rate set for other transmission and distribution (T&D) utilities. After considering the COUs' arguments, we decide that the COUs should pay conservation assessments at the same rate as other T&D utilities.

As part of this investigation, the two largest customers served by a COU, Madison Paper Industries (MPI) and Domtar Industries, Inc. (Domtar), requested lower conservation assessments for the COUs that serve them, Madison Electric Works (MEW) and Eastern Maine Electric Cooperative, Inc. (EMEC). We do not agree that the circumstances surrounding Domtar justify lower conservation assessments for EMEC. We agree with MPI that its circumstances may justify lower conservation assessments for MEW. In order to determine the proper assessment for MEW, we direct the Commission staff to arrange for an independent evaluation of the cost effective conservation potential at the MPI facility by means of a site-specific technical energy audit.

II. BACKGROUND

Pursuant to P.L. 2002, ch. 624 (the Conservation Act or Act), the Commission has developed and implemented electric conservation programs. The Commission is authorized to pay for the programs, including any necessary administrative costs, by assessing and collecting funds from the T&D utilities.

We implemented interim programs during 2002-2003 and began assessing T&D utilities in June 2002. Initially, we decided to assess the T&D utilities the amount already included in each T&D utility's rates. This decision resulted in disparate treatment for Central Maine Power Company (CMP), as CMP's rates were set at the statutory maximum, 1.5 mils/kWh, and all other T&Ds were set at the statutory minimum, 0.5% of T&D revenue. *Order on Interim Funding*, Docket No. 2002-161 (June 13, 2002).

To transition from interim programs to "on-going" programs, the Act imposes two additional requirements in setting funding levels: to assess based on the characteristics

of each T&D's service territory, and to assess in a way that is "proportionally equivalent" among all the T&D utilities, unless the Commission finds that a different amount is justified. 35-A M.R.S.A. § 3211-A(4)(A) and (D). By Order on April 4, 2003, we decided to assess all T&D utilities at the statutory maximum rate, 1.5 mils/kWh, for funding conservation programs. We found that the potential for energy efficiency is relatively proportional across T&D service territories in Maine. We also found that the achievable potential energy savings is several times greater than the savings that could be achieved at the maximum funding level, and inferred a legislative intent in such an instance to fund at the maximum level. *Order on Conservation Program Funding,* Docket No. 2002-162 (April 4, 2003) (hereinafter the April 4 Order).

For the T&Ds that were assessed during the interim period at the statutory minimum (all but CMP), we decided for rate stability purposes to phase in the increase in the conservation assessment from the minimum to maximum. The minimum assessment of 0.5% of total revenue produced an amount that varied among these T&Ds from 0.02 to 0.73 mils per kWh. We decided that the starting point for the phase-in, effective July 1, 2003, should be 0.6 mils/kWh or the current assessment level, whichever was higher. Each assessment would increase by 0.2 mils/kWh per year until the statutory maximum of 1.5 mils per kWh is reached.

In the April 4 Order, we discussed the arguments made by Madison Electric Works (MEW), Madison Paper Industries (MPI) and Eastern Maine Electric Cooperative (EMEC) that the MEW and EMEC service territories warranted smaller assessments. Ultimately, we concluded that we had insufficient information to justify a lower assessment. We acknowledged, however, that due to the nature of the Docket 2002-162 proceeding, there was no detailed, individualized examination of the COU service territories. Accordingly, we opened this investigation to give the COUs another opportunity to demonstrate facts or present arguments that justify different conservation assessments for their service territories.

In separate orders on reconsideration, we delayed the implementation of the April 4 Order as to MPI and Domtar, but not the other ratepayers of MEW and EMEC. In *Order on Reconsideration,* Docket No. 2002-162 (June 30, 2003), we decided that, because the 0.6 mils/kWh assessment would amount to more than a 66% increase to MPI, it would be equitable to exempt MPI from the conservation assessment surcharge until this investigation was concluded. In *Order on Reconsideration,* Docket No. 2003-515 (Oct. 10, 2003), we decided that Domtar's circumstances are sufficiently similar to MPI's that simplicity and equity justify exempting Domtar from the effect of the assessment surcharge, pending the conclusion of this investigation. Accordingly, we have assessed MEW and EMEC at 0.5% of the annual revenue from MPI and Domtar, respectively, and at 0.6 mils/kWh for all other kWh sold.[1]

[1] MEW has imposed a 0.6 mils/kWh surcharge on all customers other than MPI. EMEC has imposed a 0.6 mils/kWh surcharge on all customers other than Domtar.

All COUs were made parties to the investigation. In addition, the Examiner granted petitions to intervene on behalf of CMP, the Office of the Public Advocate (OPA), MPI and Domtar. As an initial matter, the Examiner directed that the parties submit in writing any facts and reasons that justify lower conservation assessments for any COU service territory.

Initial filings were made by Houlton Water Company, Fox Islands Electric Cooperative, Inc. (FIEC), Van Buren Light and Power District, Kennebunk Light and Power District (KLPD), EMEC, Domtar, MEW and MPI. Responsive filings were made by the OPA and CMP.

III. POSITION OF THE PARTIES

In its initial filing, Houlton Water Company (HWC) states that the OPA-sponsored studies (the Exeter and Optimal Reports) relied on by the Commission in its April 4 Funding Order failed to account for economic disparity between northern Maine and southern Maine. Houlton asserts that it is an unfair burden to require HWC to fund a statewide program at the same level as the T&D utilities serving the more prosperous areas of the state. Moreover, the conservation assessment represents a 6.7% increase to HWC compared to smaller increases to CMP (3.4%) and MPS (2.7%). Thus, HWC is concerned that it cannot afford the program funded at the maximum level, especially given that it believes that its customers will not achieve the maximum benefit because of earlier conservation efforts implemented by HWC. HWC describes the transmission and distribution system upgrades to reduce line losses and programs undertaken to assist end-users such as energy efficient streetlights, free hot water heater blankets and residential weatherization audits.

HWC asserts that the Commission placed greater emphasis on the fourth statutory criterion in reaching a funding decision, proportional equivalency, than on the first statutory criterion, the requirement to consider the relevant characteristics of the T&D's service territory, including the needs of customers. HWC states that the first criterion should take priority over the fourth, because proportional equivalence cannot be used to justify an increase in a T&D's conservation assessments.[2]

HWC also attaches a letter from the Plant Manager of the Louisiana-Pacific Corp. facility in New Limerick. The Plant Manager states that while HWC's rates are low compared to other Maine T&D utilities, its rates are higher than the rates that Louisiana-Pacific's competitors receive in Canada and other states. Therefore, an additional 1.5 mils/kWh will damage Louisiana-Pacific's already precarious competitive position. Moreover, the Plant Manager states that Louisiana-Pacific will not be able to recoup its conservation expenses because of the significant energy conservation measures installed in the plant over the last ten years. The plant manager states that based on

[2] The clause cited by HWC, that proportional equivalence cannot be used to justify an increase in a T&D's conservation assessment, was removed by the Legislature in 2003, P.L. 2003, c. 217, §1 (effective June 23, 2003).

Louisiana-Pacific's analysis, "there is very little remaining in the plant to be done for cost effective energy conservation." HWC concludes that its assessment should be capped at 1 mil/kWh for customers that use less than 400 kW and remain at 0.6 mils/kWh for customers that use more than 400 kW.

Van Buren Light and Power District states that it should be capped at 0.6 mils/kWh. Van Buren cites the large percentage increase that the increased assement represents to its customers. Additionally, Van Buren believes that its customers will not receive benefits as great as the costs of the larger assessments.

Kennebunk Light and Power District (KLPD) asserts that the conservation assessment represents a 13% increase in its rates. In contrast, 1.5 mils/kWh in the CMP service territory is only two to three percent of CMP's rates. KLPD also expresses concern that 27% of its assessment will be paid by its industrial class, the class of customers whose electricity demand is most elastic in KLPD's view.

KLPD instituted a variety of energy conservation programs in 1970s and 1980s. Due to these programs, KLPD does not believe cost effective conservation in the amount of its assessment is available in its service territory. KLPD requests that its customers be assessed at the minimum level, one-half of one percent of revenue. As a compromise, KLPD suggests that its industrial class of customers be assessed at the minimum, and all other customers be assessed at the current 0.6 mils/kWh without the projected step increases.

In its initial filing, MEW states that it has changed its position. MEW no longer requests that its assessment be the minimum allowed for all customers. It is willing to accept the phased-in 1.5 mil/kWh rate for its residential and small commercial customers. For Madison Paper (MPI), however, MEW states that it should be assessed at the minimum 0.5% of revenue rather than the phased-in 1.5 mils/kWh for the kWh sold to MPI. MEW states that MPI already has installed many conservation measures, and faces a difficult competitive climate, as do all paper mills in Maine.

MPI submits that Maine law compels a decision by the Commission that MEW should be assessed at the statutory floor of 0.5% of total T&D revenue. The decision is compelled because of the relevant (and unique) characteristics of the MEW service territory. MPI constitutes almost all of MEW's load (87% to 89% in recent years). No other T&D service territory is dominated by its largest customer to a similar degree. In addition, MPI asserts that it is already strongly committed to, and has invested in, energy conservation. MPI cites a FERC order in a hydropower relicensing proceeding involving MPI's facility in Madison and Anson that concludes that MPI, in the context of Federal Power Act Section 10(a)(2)(c), is making satisfactory efforts to conserve electricity. MPI therefore concludes that there is no need for Commission-implemented conservation programs for MPI's share of MEW's load.

As a transmission voltage customer, MPI contributed the entire cost of the transmission line that MEW uses to serve MPI. Because the transmission line is not

tied to MEW's distribution system, MPI asserts that it cannot receive any system benefits from conservation programs directed to MEW's other customers. In MPI's view, all of these relevant characteristics of the MEW service territory confirm the appropriateness of the statutory floor as the conservation assessment level for MEW.

MPI points out that the Commission assessments must result in conservation expenditures that are based on the relevant characteristics of each T&D service territory. MPI argues that unlike the requirement that assessments be "proportionally equivalent" which the Commission may disregard if it "finds a different amount is justified" 35-A M.R.S.A. § 3211-A(4)(A), the Act does not give the Commission the authority to disregard the relevant circumstances of T&D service territories. MPI concludes that the relevant circumstances of the MEW service territory described above compel a conclusion that the statutory floor is proper for MEW.

EMEC asserts that the Commission failed to consider the relevant characteristics of its service territory when the Commission decided conservation funding in the April 4 Order. Instead, in EMEC's view, the Commission decided to assess the statutory maximum to achieve state-wide or proportional equivalency, despite the statutory requirement that any increase in an assessment could not be imposed to achieve proportional equivalence.[3]

According to EMEC, the Commission ignored relevant characteristics of EMEC. The April 4 Order relies on the Exeter Study for potential electric conservation in Maine. The Exeter Study, in turn, focused largely on CMP's service territory. There was no attempt to determine whether EMEC's large, very rural service territory is comparable to CMP's. EMEC cites some differences that should have been considered. For example, EMEC states that its average annual usage by residential consumers is only 88% of CMP's (6172 kWh/year compared to 7000/kWh/year). Also, Exeter used CMP's appliance saturation rates to estimate the potential residential conservation in EMEC's service territory. EMEC questions the assumption that CMP's saturation rates are similar to EMEC's given the different demographics and economics of the two service territories.

EMEC concludes that the Commission has over-estimated the potential savings from residential customers in the EMEC service area. It argues that similar assumptions in the industrial and commercial sectors, such as the 2% annual growth rate in the commercial and public authority sectors, do not accurately reflect the EMEC service territory, resulting in conservation potential being overstated.

EMEC also claims that the potential for conservation is diminished in its service territory because conservation measures will be less accessible to its customers due to the large rural nature of the service territory. In addition, given that it serves a rural, lower-income area, EMEC believes that the Commission should measure the amount of

[3] The Legislature removed this statutory requirement shortly before comments were filed. P.L. 2003, ch. 217, § 1.

conservation measures actually implemented by its consumers before increasing the conservation assessment to EMEC.

EMEC urges the Commission, regardless of its decision as to proper funding levels for EMEC's other ratepayers, not to increase the funding level for Domtar. The fully-phased in assessment to Domtar would increase its rates by $46,500. Because of the competitive forces faced by the paper mill, any increase is a threat to its viability. In addition, EMEC states that Domtar has already engaged in substantial conservation efforts and therefore will not benefit from the Commission-sponsored programs.

Domtar provides a list of 11 projects that have been implemented in the last three years to save energy. Domtar provides estimates of the dollar savings and costs of each of the projects, ranging in savings of up to $500,000/year and costs of up to $950,000. Domtar asserts that it is unfair to increase its assessment because it has already paid to install cost-effective conservation. It should not have to pay again. Moreover, as the Woodland facility must compete with other mills in the U.S. and Canada, any increase in its electricity rates may result in production shifts away from Woodland to other locations.

The OPA and CMP filed responsive filings. The OPA urges the Commission to impose the funding levels as adopted in the April 4 Order. In its view, the Act creates a presumption that all ratepayers in Maine should contribute to conservation programs and be eligible for programs. To preserve fairness, the OPA suggests that any deviation from state-wide equity should be made on a utility-wide basis, or across a given class of customers regardless of utility.

Except for Fox Island (FIEC) and Swan's Island Electric Cooperative (SIEC), OPA asserts that no COU has presented facts that overcome the presumption that all Maine customers should contribute to the Conservation Fund at the same rate. The Optimal and Exeter studies demonstrated, and the Commission found, that the potential for cost-effective conservation is so large that prior efforts could not have come close to exhausting the potential.

FEIC and SIEC should be treated differently due to the high electricity rates in those service areas. The OPA would also leave open the possibility that the three largest COU customers, MPI, Domtar and Louisiana-Pacific, should be assessed at less than the statutory maximum. The OPA stated that those customers should be treated in the same manner as similarly situated transmission and sub-transmission voltage customers of the Investor-owned utilities (IOUs) are treated (in Docket No. 2003-516).[4]

CMP states that the Commission decided to implement energy efficiency programs on a state-wide basis rather than on a service territory basis. Without an equal funding level, CMP opines that a state-wide program would result in unfair cross-subsidization between service territories. CMP points to the Commission's residential

[4] See Footnote 5, *infra.*

ENERGYSTAR lighting program as an example. If the Commission allowed a COU to pay a lower assessment, residential customers of that COU could still go to the participating retail stores and receive the program's instant rebates. In that instance, CMP asserts that CMP is paying for the COU's participation in the program. Furthermore, CMP states, if the Commission excluded residential customers of the COU from participating in the lighting program, the program is no longer state-wide while the administrative burden and costs of the program are increased.

CMP asserts that the Exeter and Optimal studies did not provide any basis for treating the COUs differently. CMP also argues that CMP has spent more on conservation program activities during the last 15 to 20 years than other Maine utilities. Thus, CMP has met more of its customers' needs, and the COUs cannot justify lower assessments than CMP's because of the needs of the COUs' customers. CMP concludes by asking that the April 4 Order not be changed.

IV. PARTIAL STIPULATION

After these filings, and at the request of the parties, significant efforts were devoted to an informal settlement process. Ultimately, a comprehensive settlement was not reached.[5] Although a comprehensive settlement was not reached, many of the parties reached a partial settlement, concerning the conservation assessment for the two "island" COUs, Fox Island Electric Cooperative, Inc. (FIEC) and Swans Island Electric Cooperative (SIEC). This Partial Stipulation was filed with the Commission on June 18, 2004. None of the non-signing parties opposed it. The terms of the stipulation provide for FIEC and SIEC to be assessed at 0.6 mils/kWh and to remain at that assessment rather than be subject to the step increases provided for in the April 4 Order.

We agreed that high rates for FIEC and SIEC, the T&D utilities with the highest rates in the State, justify different conservation assessments. We found that a discounted assessment of 40% of the maximum rate to be a reasonable compromise.

[5] Because the issues raised by MPI and Domtar were similar to issues raised in Docket No. 2003-516, the investigation into whether the transmission and subtransmission level customers of the Investor-owned T&D utilities pay for conservation assessments in their rates, the processing of this COU investigation was delayed pending the resolution of Docket No. 2003-516. The IOUs investigation has now been completed, resulting in changes to the unbundled distribution and stranded costs rates to reflect the fact that all customers' rates include the costs associated with the conservation assessments, and that such costs will be recovered on a uniform per kWh basis. *Order Approving Partial Stipulation,* Docket No. 2003-516 (June 10, 2004).

Accordingly, we approved the Partial Stipulation on July 6, 2004.[6] *Order Approving Partial Stipulation,* Docket No. 2003-348 (July 6, 2004).

V. THE EXAMINER'S REPORT

In conjunction with the Partial Stipulation, the parties also agreed with the Examiner as to the proper procedure for the remainder of the investigation. The parties agreed that the initial and responsive filings were sufficient for the Examiner to issue a written recommendation as the next procedural step. The parties then would have the opportunity to file written exceptions to the Examiner's Report. Some parties also asked for an oral argument after exceptions were filed.

The Examiner issued his recommendations in two parts, and Examiner's Report on June 15, 2004 and a Supplemental Examiner's Report on August 4, 2004. The Examiner recommended that the Commission continue to assess the COUs for conservation expenses as set forth in the April 4 Order. As to MEW, however, the Examiner offered alternative recommendations. In Alternative A, the Examiner stated that although MPI claimed to invest significantly in conservation, it did not claim that the mill had exhausted all potential conservation. With some potential conservation, equitable concerns should lead the Commission to assess MPI, and MEW, at the same level as other industrial customers and utility service territories.

In Alternative B, issued as the Supplemental Examiner's Report, the Examiner recommended that the Commission find that the circumstances surrounding MPI justify treating MEW differently. The Examiner found it relevant that MPI constituted 90% of MEW's load. If MPI offered no opportunity for cost effective conservation, then the potential for energy efficiency in the MEW service territory would not be proportionate to the other T&D service territories. The Examiner was not convinced, however, that past investments exhausted the potential for MPI's cost effective conservation. Instead, the Examiner recommended that the Commission arrange for an independent audit of MPI. If the audit verified the absence of cost effective conservation at MPI, then MEW would be assessed at the statutory minimum. If the audit revealed cost effective conservation potential at the facility, then MEW will be assessed as called for in the April 4 Order and the Commission will work to design a program or programs for which MPI will be eligible.

The OPA, CMP and MPI filed exceptions. The OPA supported, with some reservation, the Examiner's Alternative B. The OPA was concerned that Alternative B might lead to other requests for audits from many other customers. Nevertheless, the

[6] We modified the Partial Stipulation to require the conversation assessment of FIEC and SIEC to be the higher of 0.6 mils/kWh or 0.5% of total T&D revenue. It is possible that 0.6 mils/kWh could be lower than the statutory minimum assessment of 0.5% of total T&D revenue.

OPA concluded the factual circumstances of the MEW service territory justified different treatment for MPI.

CMP supported the Examiner's recommendation that the COUs be assessed in accord with the April 4 Order, including MEW, for the reasons described in Alternative A. CMP asserted that Alternative B would give MPI an unfair advantage over other Maine businesses. A customer-by-customer approach to deciding conservation finding is not contemplated by the Conservation Act, in CMP's view, and therefore the Commission should find that MPI's size relative to the rest of MEW is not a relevant characteristic of MEW's service territory in deciding funding.

MPI objected to Alternative A as contrary to law, because assessments must be based on the relevant characteristics of each service territory. According to MPI, the Commission must find that MEW does not posses sufficient potential for conservation to be assessed at the statutory maximum because MPI is 90% of the MEW load, and MPI has already made significant investments into energy efficiency. MPI supports Alternative B, at least in part. According to MPI, Alternative B correctly finds it relevant that MPI constitutes 90% of MEW's load and that this unique circumstance warrants particularized treatment under the law. However, MPI objects to the standard suggested by the Examiner in deciding whether the assessment for MEW should be set at the statutory floor, that the statutory minimum requires a finding of no cost effective conservation potential. MPI asserts the "zero standard" is not workable and not in the statute. MPI argues that its prior conservation investments demonstrate insufficient conservation potential for the MEW service territory, without the need for an audit of MPI to confirm that fact. Lastly, MPI states that if the Commission is not willing to reach the conclusion that MPI has already demonstrated that insufficient conservation potential remains at it facility, then the Commission could order the proposed audit, to which MPI would agree if the "zero standard" is rejected.

V. DECISION CONCERNING THE COU CONSERVATION ASSESSMENTS

In our April 4 Order, we summarized the standards, as set out in the Conservation Act, by which we are to make our conservation funding decisions:

> The Act establishes minimum (0.5% of T&D revenue) and maximum (1.5 mils/kWh) levels, but provides only limited guidance on how the Commission should decide on a specific assessment within the authorized range. We must equalize the level of funding among T&D utilities to achieve the so-called "proportional equivalence," unless we justify different treatment. 35-A M.R.S.A. § 3211-A(4)(D). …In addition, we are to choose a funding level that is based on the relevant characteristics of the T&D service territory, including the needs of customers. 35-A M.R.S.A. § 3211-A(4)(A).

April 4 Order at 4-5.

We inferred a legislative intent in the Conservation Act to fund at the maximum level as long as achievable cost effective energy efficiency appears to be greater than the amount achievable at the maximum funding, absent a persuasive showing that the relevant characteristics of a utility's service territory warrant a lower assessment. *Id.* at 5.

In the April 4 Order, we agreed with the conclusion as stated in the Staff Report that the potential for energy efficiency is relatively proportional across T&D service territories in Maine, because the OPA studies of statewide conservation potential showed no significant difference among utility service territories. We also found that the OPA studies indicate a maximum achievable conservation potential that is so far above the level we can fund at the assessment ceiling that "we are left with huge room for error." *Id.* at 6. Our findings mean that there is little risk that the achievable conservation potential for any T&D utility does not support funding at the assessment ceiling.

In the April 4 Order, we addressed two claims made by the COUs in Docket No. 2002-162 for lower assessments, and were not persuaded that the claims justified lower assessments. The first claim related to the assertion that the 1.5 mil/kWh charge amounted to a significant percentage increase to some COU ratepayers. We noted that the large percentage increase only signified that the COUs started with lower rates. Lower rates did not justify lower assessments.

The second claim related to assertions that the COUs that served the stagnant economic areas of the state should receive lower assessments. We likewise dismissed this claim, because the assessments will not harm the local economies. It is the nature of cost effective conservation programs that money spent on electricity for a given level of output will decline. The assessments should enhance, not harm, economic development.

In this investigation, the reasons offered by KLPD, HWC, Van Buren, and EMEC (except as to Domtar) really amount to a repetition of the two earlier claims. We remain unpersuaded. By using a phase-in to increase to the assessment ceiling, the percentage increase in each year is significantly reduced. Low rates can justify a phase-in to the statutory maximum. They do not justify any other different treatment.

Likewise, adverse economic conditions do not justify lower assessments. While lower load growth can impact potential for energy efficiency for new construction programs, considerable potential will still exist for energy savings at existing homes and businesses. Even in the lower-growth service areas, the potential conservation is sufficiently greater than the achievable conservation at the assessment ceiling. Moreover, as we stated in the April 4 Order, improving energy efficiency in the slower-growth areas of the state should improve their economic vitality. In addition, there is no equitable reason for treating customers of some COUs differently from customers of some of the IOUs when both sets of customers are located in the same area and are faced with similar economic circumstances.

Some of the COUs also assert that their own conservation efforts before Electric Restructuring were so effective that the potential in their own service territory is not sufficient to support maximum funding. We agree with CMP on this point, that CMP invested in efficiency programs to a significantly greater degree than any COU, yet the achievable potential within CMP's service territory remains significant. Therefore, there is no logical reason why the COU's prior efforts would mean that they have less achievable potential compared to CMP. We are convinced that significant achievable potential conservation remains in all service areas.

Some COUs assert that adverse economic conditions, as well as geographic isolation, mean that their customers will not participate in programs to the same degree, and therefore will benefit less from conservation programs, justifying lower assessments. No doubt conservation-related costs raise equity issues because not all customers benefit equally from the programs. We attempt to mitigate these concerns by implementing a portfolio of programs so that all customers are able to participate in at least one program. We also intend that programs be designed so that the opportunity to participate is equitable across service territories. We believe our programs are designed in such a manner, but we reiterate that those COU participation concerns do not justify lower assessments but more careful program design.

The remaining claim is raised by MPI, EMEC, and Domtar. That claim is that the MEW and EMEC service territories are different because MPI and Domtar are dominant, and already efficient, large customers. The presence of the large, efficient customers lowers the achievable potential conservation in the service territory, justifying the different treatment when these "relevant characteristics" are considered. Indeed, MPI asserts that these "relevant characteristics" compel a decision to lower the assessment.

Subsection 4 of the Act directs the Commission to assess the T&D utilities for conservation funding in a manner that is proportionally equivalent on a per-kilowatt home basis, unless we find that a different amount is justified. However, subsection 4 also requires the Commission to consider each individual T&D utility service territory when we make our finding decisions, because only by examining each T&D utility can we decide that the total conservation expenditures are based on the relevant characteristics of the T&D utility. The statute does not define "relevant," but whatever definition is used, the direction to examine each service territory makes it less likely that conservation assessments will be uniform, even though "proportionally equivalent" is a targeted objective.

In our April 4 Order, we found that the technical and achievable potential for cost effective conservation was relevant in making our funding decision. As the Act requires us to consider each T&D service territory, it is logical that the potential for cost effective conservation in any particular service territory be a "relevant characteristic." Therefore, because MPI constitutes almost 90% of MEW's load, the opportunities for

cost effective conservation at MPI drive the decision whether sufficient conservation potential exists in the MEW service territory. Therefore, we agree with MPI that we will consider the cost effective conservation potential at MPI in order to decide whether the achievable cost effective conservation available in the MEW service territory is sufficient to assess MEW at the statutory maximum.

We accept MPI's evidence about the efficiency investments made at its facility in recent years. However, even if MPI has already invested in many, or even all, cost effective measures in the past, the prospective cost effective potential can be assessed only with a site-specific technical audit.

Accordingly, we accept Examiner's recommendation labeled as Alternative B. We also accept MPI's assertion that a "zero standard" is not the proper standard to determine that the statutory minimum assessment is warranted. We direct the Commission staff to choose and manage a consultant or service provider who will conduct a site-specific energy audit to assess the cost effective conservation potential at the MPI facility.[7] The auditor shall use the definition of cost effective as contained in Chapter 380 of our Rules. The audit will be paid for through the Conservation Program Fund.

After the audit is complete, the Commission will determine the proper assessment for MEW, as well as future conservation programs designed for MPI's participation if MEW's assessment is higher than the minimum. We also will decide if, and when, subsequent audits should occur. In the meantime, effective with the next quarterly billing, MEW will be assessed at the statutory minimum. [8]

Like MPI, Domtar lists the conservation projects that it has installed in recent years. Domtar, however, does not have the same impact on EMEC's service territory as MPI has on MEW's. The conclusions about the EMEC service territory made in the OPA studies are not changed even if Domtar yields no cost effective potential.[9] The conservation assessment for EMEC will therefore be made based upon all kWh delivered by EMEC, including kWh delivered to Domtar, effective with the next quarterly assessment.

In all other respects, we affirm our order of April 4, 2003, in Docket No. 2002-162.

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[7] We note that MPI has consented to the audit.

[8] MEW should file new rate schedules that remove the phased-in conservation assessment surcharge on all non-MPI customers.

[9] HWC on behalf of Louisiana-Pacific made similar claims for lower assessments. As with Domtar and EMEC, Louisiana-Pacific does not impact HWC sufficiently to alter the conclusions in the OPA studies.

Dated at Augusta, Maine, this 24th day of September, 2004.

BY ORDER OF THE COMMISSION

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Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
Diamond
Reishus

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.

2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within **21 days** of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.

3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.